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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2013-0059]

RIN 0579-AD85

Importation of Fresh Unshu Oranges From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of citrus fruit to remove certain restrictions on the importation of Unshu oranges from Japan that are no longer necessary. Specifically, we propose to remove requirements for the fruit to be grown in specified canker-free export areas with buffer zones and for joint inspection in the groves and packinghouses by the Government of the Republic of Japan and the Animal and Plant Health Inspection Service. We would also clarify that surface sterilization of the fruit must be conducted in accordance with our regulations. Finally, we would require that each shipment be accompanied by a phytosanitary certificate containing an additional declaration stating that the fruit was given the required surface sterilization. These proposed changes would make the regulations concerning the importation of Unshu oranges from Japan consistent with our domestic regulations concerning the interstate movement of citrus fruit from areas quarantined because of citrus canker.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0059>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2013-0059, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0059> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Jones, Regulatory Policy Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 851-2289.

#### SUPPLEMENTARY INFORMATION:

##### Background

Citrus canker is a plant disease that is caused by a complex of Xanthomonas spp. bacteria and that affects plants and plant parts of citrus and citrus relatives (Family Rutaceae). The regulations in "Subpart-Citrus Fruit" (7 CFR 319.28) prohibit the importation of fruit from areas

infected with certain citrus diseases, including citrus canker, unless the fruit is imported under conditions specified in that section.

Currently, the regulations in paragraph (b) of § 319.28 (referred to below as the regulations) allow the importation of Unshu oranges (Citrus reticulata Blanco var. unshu) from certain areas in Japan, into the United States under permit and after the specified safeguards of a preclearance program have been met to prevent the introduction of citrus canker, the citrus fruit fly (Bactrocera tsuneonis), and other quarantine plant pests such as mealybugs, mites, disease vectors, and armored scale pests. We last updated these requirements in a final rule published in the Federal Register on February 1, 2002 (67 FR 4873-4877, Docket No. 99-099-2). The amendments we made in the 2002 final rule were based on a pest risk assessment (PRA) that identified these pests as quarantine pests of Japanese citrus and identified measures to prevent their introduction into the United States.

Certain requirements in the preclearance program are directed specifically towards citrus canker. Under the current regulations, Unshu oranges intended for export to the United States from Japan must be grown and packed in isolated, canker-free export areas established by the national plant protection organization (NPPO) of Japan. The regulations also require the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture and the NPPO of Japan to inspect fruit in the groves prior to and during harvest, and in the packinghouses during packing operations, to ensure that the fruit are free of citrus canker. Surface sterilization of the fruit, as prescribed by APHIS, is required prior to packing.

Other requirements address the other pests that we have identified as affecting Unshu oranges from Japan. These include trapping for the citrus fruit fly and exclusion of imports from areas where the fly is found and requirements that the fruit either be fumigated with methyl

bromide for pests or that its distribution be restricted to States other than commercial citrus-producing States, to ensure that the pests are not introduced into those States.

The NPPO of Japan has requested that APHIS reanalyze the pest risk associated with the importation of Unshu oranges from Japan. In response to that request, we have developed an updated PRA, which incorporates new scientific evidence found since the preparation of the earlier PRA. The updated PRA can be viewed on the Internet on the Regulations.gov Web site<sup>1</sup> or in our reading room.

The updated PRA, titled "Importation of Japanese Unshu Orange, Citrus reticulata Blanco var. Unshu, Fruit into the Continental United States: A Pathway-Initiated Risk Analysis" (April 23, 2013), identifies 26 arthropods as quarantine pests that could follow the pathway of imported Unshu oranges from Japan. However, these pests are adequately mitigated by the existing systems approach conditions specific to arthropod pests.

The PRA identifies two diseases as pests of Unshu oranges from Japan: Citrus canker and citrus greening, "Candidatus Liberobacter asiaticus." However, the PRA determined that citrus greening is highly unlikely to be introduced into the United States via the importation of fruit for consumption, and thus did not analyze this pest further.

The PRA rates citrus canker as having a medium risk potential. Pests receiving a rating within the medium range may require specific phytosanitary measures in addition to standard port-of-entry inspection.

Based on the conclusions of the PRA, we prepared a risk management document outlining the conditions under which Unshu oranges from Japan could safely be imported into the continental United States. The conditions include:

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<sup>1</sup> Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under ADDRESSES. You may also request paper copies of the PRA by calling or writing the person listed under FOR FURTHER INFORMATION CONTACT.

- Importation of the fruit in commercial consignments that are practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. APHIS has defined commercial consignments as consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Excluding leaves and stems from consignments of imported Unshu oranges would help to prevent citrus canker from being introduced into the United States, since canker lesions on leaves harbor much higher bacterial populations than canker lesions on fruit.
- Surface treatment of the fruit in accordance with 7 CFR part 305 prior to packing, registration of the packinghouse in which the treatment is applied and the fruit is packed with the NPPO of Japan, and certification that the fruit has been treated in accordance with the regulations.

We are therefore proposing to incorporate those requirements into the regulations pertaining to the importation of Unshu oranges from Japan. (As noted above, the existing regulations do require surface sterilization of the fruit as prescribed by APHIS. Because we have determined that the use of a post-harvest disinfectant in accordance with 7 CFR part 305 is the

most effective mitigation for citrus canker, we are proposing to state explicitly that the treatment must be conducted in accordance with part 305.)<sup>2</sup>

We are also proposing to remove requirements associated with the importation of Unshu oranges from Japan that we consider no longer to be necessary. Specifically, we would remove the requirements for the oranges to be grown in specified canker-free areas and for joint inspection of the fruit by the NPPO of Japan and APHIS prior to and during harvest and in the packinghouses during packing operations. These changes are based on our conclusions in a final rule published in the Federal Register and effective on October 22, 2009 (74 FR 54431-54445, Docket No. APHIS-2009-0023). That final rule amended the conditions under which fruit may be moved interstate from an area quarantined for citrus canker by removing certain restrictions that we considered to be no longer necessary.

In that final rule, we determined that commercially packed and disinfected fresh citrus fruit, even fruit with visible citrus canker lesions, is not an epidemiologically significant pathway for the spread of Xanthomonas spp. bacteria. Accordingly, we removed a requirement for an APHIS inspector to be in the packinghouse and inspect fruit leaving an area quarantined for citrus canker to ensure that it was free of citrus canker lesions, as well as a prohibition on the interstate movement of citrus fruit from quarantined areas to commercial citrus-producing States. Considering our determination about the epidemiological significance of fruit as a pathway for citrus canker, it is similarly unnecessary to ensure that Unshu orange orchards and the fruit produced from those orchards are free of citrus canker before the Unshu oranges are exported to the United States.

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<sup>2</sup> Part 305 contains requirements for administering approved treatments. As noted in § 305.2(b), approved treatment schedules are set out in the Plant Protection and Quarantine Treatment Manual, available at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf). The approved citrus canker treatment schedule for imported citrus fruit is the same as that for domestic citrus fruit.

Our proposed removal of the requirements for Unshu oranges exported to the United States to have been produced in specified canker-free areas and jointly inspected by the NPPO of Japan and APHIS in the groves and packinghouses would parallel the changes we made in 2009 to the domestic citrus canker regulations and thus harmonize these regulations with our domestic regulations. Similarly, our proposed requirement that Japanese packinghouses be registered with the NPPO of Japan would also contribute to harmonizing our import requirements with our domestic ones by paralleling a requirement in § 301.75-7 that owners or operators of packinghouses where packing of fruit regulated for citrus canker occurs must enter into compliance agreements with APHIS. Like domestic compliance agreements, registration of packinghouses by the NPPO of Japan will allow for oversight in conducting the required treatment and adhering to other requirements related to packing (for example, box marking to reflect distribution restrictions).

#### Changes to the Regulations

Paragraph (b)(1) of § 319.28 currently sets out the requirement that Unshu oranges from Japan be exported to the United States only from canker-free areas. We are proposing to replace this requirement with a requirement that the fruit must be imported in commercial consignments that are practically free of leaves, twigs, and other plant parts, as discussed earlier.

Paragraph (b)(2) sets out trapping requirements related to the citrus fruit fly for production areas on Kyushu Island. These requirements refer to trapping both in orange export areas and in buffer zones, which are currently described in paragraph (b)(1) as 400 meters wide. We would amend paragraph (b)(2) to remove the requirement for trapping in buffer zones. The paragraph requires trapping to be conducted as prescribed by the NPPO of Japan and APHIS. Removing the specific distance requirement from the regulations would allow the NPPO of

Japan and APHIS to determine how big a buffer zone around each Unshu export area needs to be incorporated into the trapping, based on local conditions, and to adjust the zone if circumstances change or new information is found. The requirement would otherwise remain unchanged.

Paragraph (b)(3) requires joint inspection of Unshu oranges in the groves and in the packinghouses by the NPPO of Japan and APHIS. We are proposing to remove this requirement. Instead, the current requirement in paragraph (b)(4) that the fruit be given a surface sterilization would be moved to paragraph (b)(3), with the changes discussed above. Paragraph (b)(4) would indicate that the packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the NPPO of Japan.

We are proposing to add a new paragraph (b)(5) indicating that the Unshu oranges from Japan must be accompanied by a phytosanitary certificate issued by the NPPO of Japan with an additional declaration that the Unshu oranges were packed and produced in accordance with 7 CFR 319.28. We would renumber current paragraphs (b)(5), (b)(6), and (b)(7) as paragraphs (b)(6), (b)(7), and (b)(8), respectively.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).



APHIS received a request from the Government of Japan to reassess the requirements for importing Unshu oranges into the continental United States. The proposed rule would harmonize our regulations that allow importation of Unshu oranges from Japan with our domestic citrus canker regulations.

Easy-peel, sweet, juicy, seedless mandarin varieties, including Unshu oranges, are gaining popularity in the United States. The United States does not commercially produce Unshu oranges, but does produce various similar mandarin varieties. U.S. production of these mandarin varieties doubled in 6 years, from a quarter million metric tons (MT) in 2007 to almost half a million MT in 2012. Production values of mandarin varieties more than doubled, from \$141 million in 2007 to \$336 million in 2012. In general, harvesting and marketing activities are most active between January 1 and March 31 in California and between November 15 and March 15 in Florida. U.S. imports of mandarin varieties averaged about 142,000 MT per year, valued at \$178 million, between 2010 and 2012, with Chile, Spain, Peru, and Morocco the main sources. Net imports (imports minus exports) averaged about 100,000 MT per year.

In 2012, Japan exported 2,400 MT of Unshu oranges valued at \$4.5 million. Canada was the main destination, accounting for 83 percent of Japan's exports (2,000 MT). Unshu oranges have not been imported from Japan into the United States for the last 3 years. Between 1996 and 2009, the United States imported about 200 MT of Unshu oranges from Japan annually, valued at about \$340,000, only during the months of November and December. They were typically sold at a premium in ethnic specialty stores and through small-package direct delivery to customers who celebrated the New Year's holidays.

Reportedly, up to 500 MT of Unshu oranges may be imported from Japan under the proposed rule. Given the much lower volumes and restricted seasonality of past Unshu orange

imports from Japan (about 200 MT annually imported, and only during the months of November and December), 500 MT may be an ambitious goal. The 500 MT would be equivalent to less than one-tenth of 1 percent of the U.S. supply of mandarin varieties in 2012.

Korea is currently the principal source of Unshu oranges imported by the United States. Even if imports from Japan were to reach 500 MT, we expect any product displacement that would occur would be largely borne by Korean Unshu orange suppliers. The extent to which U.S. producers of other mandarin varieties may be affected would depend upon the quantity imported, the degree to which consumers may substitute Unshu oranges for the other mandarin varieties, and their price competitiveness. The Japanese Unshu orange share of the U.S. market for mandarin varieties is expected to be negligible; past imports have served a specialty market during a limited time of the year; and they garner a premium price. Collectively, these conditions lead to the conclusion that any effect of the proposed rule for U.S. producers of other mandarin varieties would be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would change the requirements for Unshu oranges to be imported into the continental United States from Japan. If this proposed rule is adopted, State and local laws and regulations regarding Unshu oranges imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a

case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2013-0059. Please send a copy of your comments to: (1) APHIS, using one of the methods described under ADDRESSES at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Implementing this rule will require phytosanitary certificates and registration of packinghouses.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: The NPPO of Japan and Unshu orange packinghouses.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 8.

Estimated annual number of responses: 16.

Estimated total annual burden on respondents: 8 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

## List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.28 is amended as follows:

a. In paragraph (b) introductory text, by removing the words “paragraph (b)(7)” and adding the words “paragraph (b)(8)” in their place.

b. By revising paragraphs (b)(1) through (b)(4).

c. By redesignating current paragraphs (b)(5), (b)(6), and (b)(7) as paragraphs (b)(6), (b)(7), and (b)(8), respectively.

d. By adding a new paragraph (b)(5).

The addition and revisions read as follows:

#### § 319.28 Notice of quarantine.

\* \* \* \* \*

(b) \* \* \*

(1) The Unshu oranges must be imported in commercial consignments that are practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

(2) In Unshu orange export areas on Kyushu Island, Japan, trapping for the citrus fruit fly (Bactrocera tsuneonis) must be conducted as prescribed by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries and the U.S. Department of Agriculture. If fruit flies are detected, then shipping will be suspended from the export area until negative trapping shows the problem has been resolved.

(3) Before packing, the oranges must be given a surface sterilization in accordance with part 305 of this chapter.

(4) The packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries.

(5) Unshu oranges imported from Japan must be accompanied by a phytosanitary certificate issued by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries with an additional declaration that the Unshu oranges were packed and produced in accordance with 7 CFR 319.28.

\* \* \* \* \*

Done in Washington, DC, this 4th day of April 2014 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014-08019 Filed 04/09/2014 at 8:45 am; Publication Date: 04/10/2014]